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15 Attorneys for Plaintiffs

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF WYOMING**

18 **ESTATE OF RUSSELL MONACO, BY AND)**
19 **THROUGH KATHY MONACO, WRONGFUL)**
20 **DEATH REPRESENTATIVE AND)**
21 **PERSONAL REPRESENTATIVE, AND)**
22 **KATHY MONACO, INDIVIDUALLY AND)**
23 **ON BEHALF OF MINOR CHILDREN,)**

13-CV-151S

Plaintiffs,

vs.

24 **HARLEY G. MORRELL, PA-C, JOHN)**
25 **SCHNEIDER, JR., M.D., NORTHERN)**
26 **ROCKIES NEURO-SPINE, P.C., a Wyoming)**
27 **Corporation, AND JOHN DOES 1 THROUGH)**
28 **10,)**

Defendants.

29 **PLAINTIFFS' WRITTEN SUBMISSION CONCERNING THE VIABILITY OF**
30 **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND THE EFFECT OF ANY**
31 **AUTOMATIC STAY IN LIGHT OF DEFENDANT MORRELL'S NOTICE OF**
32 **BANKRUPTCY PROCEEDINGS [74] AND DEFENDANT SCHNEIDER'S NOTICE OF**

BANKRUPTCY PROCEEDINGS [134]

COME NOW Plaintiffs Estate of Russell Monaco, by and through Kathy Monaco, Wrongful Death Representative and Personal Representative, and Kathy Monaco, individually and on behalf of her minor children ("Plaintiffs"), by and through their undersigned counsel of record, Jon M. Moyers, Moyers Law P.C., and Fred Paoli, Bogue Paoli & Thomas LLC, and informs the Court as follows:

1. With regard to the Harley Morrell bankruptcy, that was a Chapter 13 filing in the Northern District of Alabama where Mr. Morrell now resides. It is Plaintiffs' counsels' understanding, from having discussed this matter with Mr. Morrell's bankruptcy lawyer some time ago, that Mr. Morrell was indeed going to exempt the Monaco Estate from his bankruptcy. Counsel is attempting to get documentation of that from Mr. Morrell's bankruptcy attorney, but as of the date of this writing, has been unable to do so.
2. Counsel for Plaintiffs attempted to call Mr. Morrell's bankruptcy attorney, Lisa Hancock, in Alabama to find out the status. We were told that Ms. Hancock was on vacation until December 29, 2014 and would be unavailable to return our call until then.
3. Harley Morrell was insured by Dr. Schneider's captive insurance company, Northern Rockies Insurance Company. This Court has already been informed regarding Dr. Schneider's fraudulent transfer of funds from Northern Rockies Insurance Company to pay for a libel settlement with Dr. Biles. The existence of

1 insurance to pay for an unliquidated claim normally would exempt that claim from
2 bankruptcy. When Mr. Morrell filed a claim with Northern Rockies Insurance
3 Company regarding the Monaco lawsuit asking for a defense attorney and possible
4 settlement of his claim, Northern Rockies Insurance Company denied Mr. Morrell
5 for no good reason.

6 4. Based on the above, Plaintiffs feel summary judgment should enter against Mr.
7 Morrell so that Plaintiffs can pursue the fraudulent transfer claim which is presently
8 pending against Dr. Schneider and Northern Rockies Neuro-Spine.

9 5. Additionally, based on recently discovered bank accounts, it appears that Northern
10 Rockies Insurance Company paid out the three million dollars Dr. Schneider
11 requested, and it was then deposited into Northern Rockies Neuro-Spine and money
12 was then given by Northern Rockies Neuro-Spine to Dr. Biles to settle the claim.
13 Therefore, it appears both Northern Rockies Insurance Company and Northern
14 Rockies Neuro-Spine should be defendants in Plaintiffs' fraudulent transfer cause of
15 action. Plaintiffs will be asking this Court for leave to amend their pleading to bring
16 in Northern Rockies Insurance Company as a defendant. Northern Rockies Neuro-
17 Spine is already a defendant.

18 6. With regard to Northern Rockies Neuro-Spine, the automatic stay of bankruptcy
19 protection only extends to the debtor, property of the debtor or property of the
20 estate. *Chuggach Timber Corp. v. Northern Stevedoring*, 23 F.3d 241, 246 (9th Cir.
21 1994), *Groner v. Miller (In re Miller)*, 262 B.R. 499 (9th Cir. BAP 2001). The

1 automatic stay does not stay actions against guarantors, sureties, corporate affiliates,
2 or other non-debtor parties liable on the debts of the debtor. *Id.* The automatic stay
3 imposed in a corporate bankruptcy does not stay assertion of the same claim against
4 the corporate debtor's principal shareholder and person in control of the debtor.

5 *Greening v. Stratton Oakmont, Inc.*, 1997 U.S. App. LEXIS 9761, footnote 1 (9th
6 Cir. 1997). Generally, the automatic stay applies only to the party filing for
7 bankruptcy and the remaining parties to a suit may still proceed with the litigation.
8 *Corbo v. Fid. Fed. Fin. Services*, 2011 U.S. Dist. LEXIS 84430 *4 (D. Nev. 2011).

9 Plaintiffs feel summary judgment should enter against Northern Rockies Neuro-
10 Spine.

11 7. The procedure when a co-debtor wants the automatic stay extended to it is for the
12 co-debtor to apply to the bankruptcy court for relief. *Gucci, Am. Inc. v. duty Free*
13 *Apparel*, 328F. Supp. 2d 439, 441 (S.D. N.Y. 2004). There has been no notification
14 in this case that Northern Rockies Neuro-Spine has applied to the bankruptcy court
15 as a co-debtor for protection. As such, this case should proceed against all parties
16 other than Dr. Schneider.

17 8. On November 24, 2014, counsel participated in a telephonic status conference with
18 Magistrate Rankin at the request of Mr. Emery. Mr. Emery wanted to confirm that
19 Plaintiffs would file their expert witness disclosures on December 9, 2014 and that
20 he had until January 9, 2015 to disclose his experts. Mr. Emery also felt that the
21 February 9, 2015 trial date was untenable and was asking for another trial date in

1 either March or April. Magistrate Rankin confirmed the expert witness disclosure
2 dates, and asked counsel to confer regarding a new trial date and get back to him. In
3 the interim, on December 4, 2014, Dr. Schneider filed for bankruptcy, and Mr.
4 Emery notified this Court of same on December 8, 2014.

5 9. If this Court does rule that the case may proceed against Defendants Morrell,
6 Northern Rockies Neuro-Spine and allows Plaintiffs to bring in Northern Rockies
7 Insurance Company, it is probable that a new trial setting will be necessary.

8 10. We will supplement this status report upon a response from Ms. Lisa Hancock
9 regarding Mr. Morrell's bankruptcy.

10 DATED this 22nd day of December , 2014.

11 MOYERS LAW P.C.

12
13 By: /s/ Jon M. Moyers

14 Jon M. Moyers
15 Wyo. State Bar #6-3661

16 Attorney for Plaintiffs
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I hereby certify that on this 22nd day of December, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF System which will send notification of such filing to the following:

Stephenson D. Emery semery@wpdn.net, akeller@wpdn.net, mglendenning@wpdn.net,
srocha@wpdn.net

No manual recipients.

By: /s/ Jon M. Moyers

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